IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Crl.MC.No. 2500 of 2007()

CC.403/2004 of JUDL. MAGISTRATE OF FIRST CLASS, KUNNAMANGALAM

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PETITIONER: ACCUSED NO.1

P.C.SIDDIQUE, S/O.MOIDEEN KOYA HAJI,
AGED 37 YEARS, CHEMBANAGAT HOUSE,
CHEROOPPA, KOZHIKODE.

BY ADV. SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS:

STATE OF KERALA,
REPRESENTING S.I. OF POLICE,
MAVOOR POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2500 of 2007

Dated this the 6th day of August 2007

O R D E R

The petitioner is the first accused. He, along with the co-accused, faces indictment for offences punishable inter alia under Section 332 read with 34 I.P.C. The petitioner was not available for trial. The co-accused, who stood trial were found not guilty and acquitted by the learned Magistrate. The petitioner has now come before this court with the prayer that the proceedings against him may also be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason? The short reason urged is that the co-accused have been found not guilty and acquitted. It is contended that if the witnesses were to tender the same evidence before the learned Magistrate, the petitioner is unlikely to be convicted. In these circumstances, it is prayed that the proceedings against the petitioner may also be quashed.

3. I am afraid the contention cannot be accepted. The last trace of doubt on this aspect is removed by the judgment of the Full Bench in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)]. It is now trite that the mere fact that the co-accused have been found not guilty and acquitted on the basis of the evidence which was

available in the trial also against him is no reason for an absconding co-accused to claim any benefit or advantage. The witnesses who tendered evidence in such case were not expected to nor did they have any opportunity to tender evidence against the petitioner. It would be puerile at this stage to assume that in the trial against the petitioner identical evidence will be repeated and no witnesses will be available for tendering incriminating evidence against the petitioner. In any view of the matter, I am not persuaded to agree that the petitioner who has avoided the arms of law for a long period of time - the offence was committed in 1999 and the case was registered in 2000, is entitled to the invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and claim discharge/acquittal at the appropriate stage.

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007